COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case

A.O. NO. 1371 of 2001

Oriental Insurance Co. Ltd

Versus

Sri Kailash Sharma and others

With

A.O. No. 271 of 2002

Oriental Insurance Col Ltd.

Vs.

Sri Vinod Kumar and others.

A.F.R. (Approved for Reporting)
~~Not Approved for reporting~~

(B.S. Verma, J.)

Date:05-08-2006 ***Initials of Judge***

THE HIGH COURT OF UTTARANCHAL AT NAINITAL
A.O. No. 1371 of 2001

Oriental Insurance Co. Ltd. through its Divisional Manager,
Divisional Office Bhotia Parao, Haldwani, District Nainital.

…Appellant

Versus

1. Sri Kailash Sharma, S/O Sri M.L.Sharma
   R/O C-862 Sector Colony, Kalagarh, Pauri Garhwal
   At Present Aswal Sadan, Suman Marg, Gyanashu, District Uttarkashi,
2. Sri Anand Kishore Narayan S/O Sri M.K.Narayan,
   R/O 183-A, Rajpur, Road, Dehradun.

… Respondents

and

A.O. No. 271 of 2002

Oriental Insurance Co. Ltd. through its Divisional Manager,
Divisional Officer Bhotia Parao, Haldwani, District Nainital.

…Appellant

Versus

1. Sri Vinod Kumar Sharma, S/O Sri M.L.Sharma
   R/O 862 Center Colony, Kalagarh
   At Present Aswal Sadan, Suman Marg, Gyanasu, District Uttarkashi,
2. Sri Anand Kishore Narayan S/O Sri M.K.Narayan,
   R/O 183-A, Rajpur, Road, Dehradun.

… Respondnets

Sri Prabhat Pande, learned counsel for the appellant.
Sri Lalit Sharma, Adv. Learned counsel for the claimant-respondents.

Date August 05,2006.

P.C: Hon. B.S. Verma, J.

Both these appeals under Section 173 of the Motor Vehicles Act, 1988 ***(for short the Act)*** arise out of the same motor accident and similar questions are involved for determination in these appeals, therefore, for the sake of convenience, both the appeals are heard together and are being decided by a common judgment.

A.O. No. 1311 of 2001 is directed against the judgment and award dated 20-4-2001, passed by the Motor Accident Claims

Tribuanl/ District Judge, Uttarkashi ***(in short the Tribunal)*** in Motor Accident Claim Petition No. 22 of 1999 moved under Section 166 of the Act by the claimant-injured Kailash Chandra Sharma, whereby compensation of Rs.1,08,000/- along with interest @ 10% per annum has been awarded in favour of the claimant against the Insurance Company-appellant as well as Anand Kishore Narain, the owner of the vehicle A.O No. 271 of 2002 has been preferred by the insurer of the vehicle against the judgment and award dated 12-7-2002, passed by the learned Tribunal in Motor Accident Claim Petition No. 60 of 1999, Vinod Kumar Sharma Vs. Anand Kishore Narayan and others, whereby compensation of Rs. 15,000/- along with interest has been awarded in favour of the claimant against the opposite parties jointly and severally as mentioned in the impugned order.

At the outset, it may be mentioned that in the present appeals, the motor accident occurred involving Jeep No. U.P.-07E-3177 on 12.5.1998, near Dharasu at place Am Bagh, which hit scooter No. U.P. 021 B-3082. The scoorist Vinond Sharma was driving the same and his brother Kailash Sharma was sitting as pillion rider on the same. The scoorists-injured were going from Uttarkashi to Dharasu. It was alleged by the claimants that the offending jeep was being driven rashly and negligently by driver Satendra Singh. As a result of impact, both the claimants suffered injuries and became unconscious. They were brought to the District Hospital, Uttarkashi and subsequently, they were referred to Dehradun Hospital for treatment. The claimants-injured incurred heavy expenditure in their treatment and, therefore, claimant Kailash Sharma filed claim petition for compensation of Rs. 5,70,000 along with interest@ 18% per annum, while injured Vinod Kumar Sharma filed petition for compensation of Rs. 2,55,500/- on different counts. The offending jeep was duly insured with the appellant-insurance company and it was owned by Anand Kishore Narayan.

It may be mentioned that the owner and driver of the offending jeep did not file any written statement and have not contested the claim petition.

The Insurance Company filed it written statement and contested the claim petitions. According to insurer, the offending jeep was not insured on the date of accident. It was asserted that the owner/insured issued a cheque in respect of premium of the insurance, which was dishonored for want of sufficient funds in the account. On this ground, the Insurance Company has asserted that it was not liable to pay compensation.

On the pleadings of the parties, the learned Tribunal framed three issues in the case. Issue no. 1 related to rash and negligent driving by the driver of the offending jeep. Issue No. 2 related to the non-insurance of the vehicle on the ground raised by the insurer and issue no. 3 related to the relief and compensation.

The learned Tribunal recorded the evidence led by the rival parties, heard them and after perusing the material on record, it came to the conclusion that the accident in question in resulting into injuries to the claimants occurred due to rash and negligent driving on the part of the driver of the offending jeep. On Issue No.2, the learned Tribunal placed reliance on the verdict of the Apex Court in the case of *National Insurance Co.Ltd. Vs. Seema Malhotra and others [(2001) 3 S.C.C., Page 151]* and observed that where the cheque of premium is dishonoured and insurance cover note is issued, the insurer is liable to pay the compensation. On issue No.3, after perusing the evidence led by the parties, the learned Tribunal has awarded compensation of Rs. 1,08,000/- in favour of the claimant Kailash Sharma and the claim petition of Vinod Kumar Sharma was decreed for a sum of Rs. 15,000/-, as mentioned earlier.

Aggrieved by the judgment and awards, under appeal, the Insurance Company has filed two separate appeals.

The impugned judgment and awards have been assailed mainly on the grounds that the learned Tribunal has erred in fastening the liability on the insurer ignoring the fact that there was no insurance policy in existence between the appellant and the insured on the date of accident and the learned Tribunal erred in not considering the effect of dishonour of the cheque towards payment of premium to the appellant, therefore, the contract being void between the insured and the insurer, the Insurance Company is not liable to pay the compensation.

I have heard the rival contentions of learned counsel for the parties and perused the entire material on record.

The only point for determination in the present appeals is whether on the ground of dishonour of cheque issued by the insured to the Insurance Company, the Insurance Company is not liable to satisfy the award.

At the outset, it maybe mentioned that the provisions of Sections 146, 147 and 149 of the Motor Vehicles Act were considered by the Apex Court in the case of ***New India Assurqnce Co. Ltd. Vs. Rula and others' [2000) 3 Supreme Court Cases, Page 195],*** wherein it was held that ***"Insurer's liability against third-part risk- Extent of, when cheque received towards premium bounced and, consequently, the policy was cancelled- In such circumstances, rights accrued if favour of the third party prior to the cancellation of the policy, held, would remain unaffected by the cancellation irrespective of any provisions to the contrary contained in Contract Act or Insurance Act- Further held, a contract of motor insurance has to be interpreted in the light of the relevant provisions of Motor Vehicles Act."*** In that case, the Apex Court further observes as under:-

" The appellant insured the respondent's truck on 8-11-1991 and issued an insurance policy in terms of the requirements of the Motor Vehicles Act, 1988. The same day, the truck met with an accident culminating in death of three persons. However, about a week later the cheque, by which the respondent had paid the premium, bounced and consequently, the appellant cancelled the policy. The dependants of the deceased persons filed claim cases before the Motor Accidents Claims Tribunal, which overruled the appellant's objections and awarded compensations in each case. The High Court dismissed the appellant's appeals. Before the Supreme Court, placing reliance on various provisions of the Contract Act, 1872, the appellant contended that on account of bouncing of the cheque there was a failure of consideration and as such no contract of insurance came into existence as between the insurer and the insured. The appellant further contended that under Section 64-VB of the Insurance Act, 1938, no risk would be assumed unless premium was received in advance. Rejecting these contentions and dismissing the appeals, the Supreme Court held: "A contract of insurance, like any other contract, is concluded by offer and acceptance. Normally, a liability under the contract of insurance would arise only on payment of premium if such payment was made a condition precedent to the insurance policy taking effect. But such a condition which is intended for the benefit of the insurer can be waived by the insurer."

In the said case, the Apex Court in paragraph no. 13 has observed that ***"the subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the insurance of the policy on the date on which the accident took place. If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third pay would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party."***

In the cases at hand, the insurance Company-appellant filed it written statement. In para no. 2 of its written statement, it has been asserted by the insurance company that owner of the vehicle Anand Kishore Narayan issued Cheque No. 426548 dated 10-5-98 for Rs. 6990-00 drawn at Punjab and Singh Bank, Rajpur Road, Dehradun on the basis of which Cover Note of Insurance No. 432842 was issued, but the said cheque was dishonoured on 14-5-98 and consequently the Cover Note issued in favour of the owner of the vehicle was cancelled. Admittedly, the accident in the present case occurred on 12-5-1998 and it is also admitted that the Cover Note of Insurance was issued by the Insurance Company on 10-5-1998. The cheque was dishonoured by the Bank on 14-5-98. Thus, on the date of accident the vehicle cannot be said to be not insured. The facts of the present appeals are similar to that of the case of New *India Assurance Co.Ltd. Vs. Rula and others (supra).*

The learned counsel for the appellant-Insurance Company has placed reliance upon the Full Bench judgment of the Kerala High Court in the case of ***Oriental Insurance Company Limited Vs. A.B.Sivankuty & Ors" [I(2206) ACC 38(FB)],*** wherein it was held that ***"Insurance Act, 1938- Section 64-VB- Motor Insurance-Policy cancellation of- Third party risk-Liability of Insurance Company- Whether Insurance Company is liable to third party for damages once this policy is issued and even if it is cancelled for non-payment of premium and accident has taken place after cancellation- Held, yes."*** In the result, the Kerala High Court observed ***that "The position is that the liability of the Insurance Company in damages for third party risks continues for the entire period covered by the policy in spite of the cheque issued towards payment of premium was dishonoured and consequently policy was cancelled by the Insurance Company. The remedy of the Insurance Company lies against the "insured" to have the amount paid by them by way of compensation for third party risks to be got reimbursed."***

Having considered the facts and circumstances of the case at hand in the light of the judgments referred to above, I find that the Insurance Company has not brought on record evidence to the effect that the Insurance Policy was in fact cancelled after the cheque issued by the owner was dishonoured, therefore, I am of the view that the Insurance Company be directed to satisfy the entire decretal amount before the Motor Accident Claims Tribunal within one month from the date of production of certified copy of this order. The learned Tribunal shall thereupon decide the matter "***whether the insurance policy in question was cancelled by the appellant subsequently and if so, whether the Insurance Company has a right to recover the amount of compensation form the insured-owner of the vehicle."*** The learned Tribunal shall afford to the Insurance Company and the owner of the jeep to lead evidence on the point and the matter shall be confined between the Insurance Company and the owner of the Jeep Anand Kishore Narayan.

In view of the discussion aforesaid, the appeal deserves to be partly allowed.

Both the appeals are partly allowed. The appellant is directed to satisfy the awards under challenge before the learned Tribunal concerned within a period of one month form the date of production of certified copy of this order. The learned Tribunal shall then proceed to decide the above point between the Insurance Company and the owner of the vehicle.

The amount in deposit with Court, if any, shall be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants as directed by the learned Tribunal.

RCP **(B.S. Verma, J.)**